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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

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Amerifinancial, Inc.,

Plaintiff,

*versus*

RMC Energy Group, LLC and  
Mark Fitzgerald

Defendants.

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Civil Action 07-01009

## Opinion on Partial Summary Judgment

1. *Introduction.*

An investment broker agreed to assist investment in an oil company. The company did not pay as it agreed. It must.

2. *Background.*

Amerifinancial, Inc., agreed to assist RMC Energy Group, LLC, to obtain investors and lenders. Amerifinancial seeks the commissions due under the contract with Energy. Energy's answer was struck for intransigence; it repeatedly failed to produce the documents ordered by the Court or attend conferences. Amerifinancial moved for summary judgment.

5. *Role of Amerifinancial*

Energy says it had existing relationships with these investors. It argues that Amerifinancial should not be paid because it contributed nothing. This argument fails; the contract says that Amerifinancial is entitled to a fee if a transaction is consummated. To avoid these arguments, Amerifinancial obtained an agreement with Energy for a commission on all capital introduced during the contract period. Amerifinancial had only a general duty to assist, while Energy had a specific duty to pay Amerifinancial a percentage of all consummated transactions. Amerifinancial is due its damages.

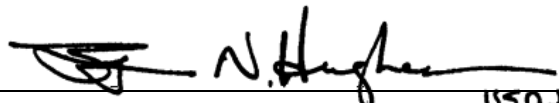
4. *Conclusion.*

Because Energy's answer was struck, its arguments should not need to be addressed, but the Court did in an excess of process. Amerifinancial pleaded damages of fees, membership interest of RMC Energy Group, LLC, which shall not be diluted for five years, a percentage of the total capitalization of RMC Energy Group, LLC, and prejudgment interest on these amounts. It also sought court costs, expenses, attorneys fees, and post judgment interest.

Amerifinancial is awarded \$107,201.85 and interest. Although the contract between the parties called for Amerifinancial to be granted a 3% and 0.84% membership interest of Energy, the Court will not force adverse parties into partnerships with each other.

If Amerifinancial insists on recovering these percentages, each side will have until April 21, 2008, to file an estimate of the value of these interests with the Court.

Signed on April 11, 2008, at Houston, Texas.

  
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Lynn N. Hughes  
United States District Judge